

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

**KOMATSU FINANCIAL
LIMITED PARTNERSHIP,**

Plaintiff,

v.

Civil Action No.: 5:18-cv-1336

KIRBY LAND COMPANY INC.,

Defendant.

**KOMATSU FINANCIAL LIMITED PARTNERSHIP'S
NOTICE OF INTENT TO PURSUE SEPARATE ACTION**

NOW COMES Plaintiff, Komatsu Financial Limited Partnership (“Komatsu”), by the undersigned counsel, pursuant to this Court’s request in its *Memorandum Opinion and Order* [Dkt. 233], and hereby notifies this Honorable Court of its intent to pursue a separate action to recover the \$9,017,009.15 which it is owed by Kirby Land Company, Inc.

In the *Memorandum Opinion and Order*, the Court requested that Komatsu “state whether it desires to continue with its suggestion process knowing that it may well expend considerable fees and costs in doing so with the risk of the matter becoming moot at any time by a unilateral Kirby/Southern action described heretofore.” *Memorandum Opinion and Order*, p. 14. The Court also noted that instead of continuing the suggestion process, Komatsu might instead “institute a separate action to develop and prosecute an instrumentality or alter ego claim.” *Id.* After considering the Court’s Order and concerns regarding the suggestion process detailed within, Komatsu has decided to pursue payment of Kirby’s debt through a separate action.

WHEREFORE, Komatsu Financial Limited Partnership hereby reserves the right to pursue a separate action to develop and prosecute new claims in pursuit of payment pursuant to the judgment against Kirby Land Company, Inc., including an instrumentality and/or alter ego claim.

**KOMATSU FINANCIAL
LIMITED PARTNERSHIP**

By Counsel

/s/ L. Elizabeth King

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CERTIFICATE OF SERVICE

The undersigned, counsel for Plaintiff, Komatsu Financial Limited Partnership, do hereby certify that I have served the foregoing “**Komatsu Financial Limited Partnership’s Notice of Intent to Pursue Separate Action**” on February 9, 2024, via the CM/ECF system. Notice of this filing will be sent to all parties listed below by operation of the Court’s electronic filing system:

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